IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 721 OF 2005

Indian Airlines Limited)
A Public Limited Company)
Incorporated In Delhi having its)
registered office at Airlines House)
113, Gurudwara Rakabganj)
Road, New Delhi - 110 001 and)
one of its Regional offices for)
Western Region at New)
Engineering Complex, Vile-Parle)
(East), Mumbai 400 099.) .....Petitioner.

V/s

1. V. N. Jalpur)
residing at C/o. Mrs. Lilavati N.)
Jalpur, 101, Ashoka Raheja)
Township, Malad (E), Mumbai)
)
2. National Industrial Tribunal)
having its offce at 1st floor,)
"Shramraksha Bhavan", Shivshristi)
Road, Opposite Priyadarshani,)
Eastern Express Highway Sion(E))
Mumbai - 400 022.) .....Respondents.

Mr. S.M. Dixit with Ms.Chhaya Shah for the Petitioner.

Mr. Mohan B. Singh for Respondent No.1.

CORAM: V.M. KANADE, J.

DATE : 11th April, 2007.

ORAL JUDGMENT:

1. By this Petition, the Petitioner is challenging the order passed in Approval Application No.16/1994 arising out of Reference No.NTB-1/90 and order passed in Misc. Application No.1 of 2004 dated 21/04/1999, 18/12/2003 and 07/1/2004 respectively.

FACTS:

2. Brief facts which are relevant for the purpose of deciding this Writ Petition are as under:-

3. The Respondent No.1 was working as Traffic Assistant with the Petitioner - Company sometime between 17/11/1992 and 21/11/1992. It is alleged that he had singed refund vouchers which were prepared by Ajay Mukherjee, as an authorized officer though he was not authorized to sign the said vouchers. A charge-sheet was issued against the Respondent No.1. An inquiry was held. However, according to the Petitioner, the Respondent No.1 did not attend the

inquiry and, therefore, an ex parte inquiry was conducted against the Respondent No.1 and, thereafter, a show cause notice was sent to the Respondent No.1 in which punishment of dismissal was proposed by the Inquiry Officer. According to the Petitioner, the report of the inquiry was sent to the Respondent No.1. Time was taken by the Respondent No.1 to file reply. However, since no reply was sent by him, on 30/03/1994 an order of dismissal was passed. In the meantime, the Petitioner filed an application for approval before the National Industrial Tribunal vide Approval Application No.NTB 16 of 1994. On 21/04/1999, the Tribunal refused to grant approval on the ground that the inquiry was conducted ex-parte and that the Respondent No.1 was not given sufficient opportunity. Thereafter, a review petition was filed and it was urged that the Tribunal had committed an error of law which was apparent on the face of the record as no opportunity was given to the petitioner to prove its case before the Tribunal. The Tribunal accepted the submission made by the learned Counsel appearing on behalf of the Petitioner and set aside its earlier order dated 21/04/1999.

4. Thereafter, the Petitioner - Company filed affidavits of its witnesses viz. Shri Mahadevan and Shri Kale etc. The Respondent No.1 did not file his evidence and, therefore, evidence was closed.

5. The Tribunal by order dated 18/12/2003 rejected the Approval Application No.NTB 16 of 1994. Thereafter, another application for review was filed by the Petitioner - Company dated 07/01/2004 vide Misc. Application No.1 of 2004, seeking review of its order dated 18/12/2003. The Tribunal, however, rejected the Misc. Application by its order dated 07/01/2004.

SUBMISSIONS:

6. I have heard the learned Counsel Appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent No.1 at length. The learned Counsel appearing on behalf of the Petitioner submitted that the Tribunal had completely erred in rejecting the application for

approval. He submitted that when application for approval is filed before the Tribunal, the Tribunal is expected to see whether a prima facie case is made out for grant of approval because if approval is granted, the respondent No.1 has right to institute substantive proceedings challenging the order of termination. He submitted that there was sufficient evidence on record to establish that the Respondent No.1 had singed those two vouchers and that there were circulars issued in 1989 which were on record which clearly stipulated that the refund vouchers were to be signed by the authorized persons only. He submitted that the evidence of Shri Mahadevan and Shri Kale coupled with the Circulars which were on record clearly established that the Respondent No.1 was not authorized to sign the refund vouchers and, yet, he had signed them and, as a result, a loss was caused to the Petitioner - Company. He submitted that the Tribunal had clearly erred in holding that the Company had not proved that the Respondent No.1 had signed those vouchers. He submitted that the Tribunal had clearly overlooked the fact that the Respondent No.1 himself had admitted that he had signed those two vouchers. He

submitted that, therefore, the Tribunal had clearly committed an error of law which was apparent on the face of the record and the impugned order was liable to be set aside. He invited my attention to the impugned order which was passed by the Tribunal.

7. The learned Counsel appearing on behalf of Respondent No.1 submitted that there was no material on record to indicate that the Respondent No.1. Was not authorized to signed these vouchers. He submitted that coincidentally the charge-sheet was filed against the Respondent No.1 only after he was nominated as an office bearer of the Union. He submitted that the circular on which reliance was placed in the review application was issued in September, 1989 which was after the alleged vouchers were singed by the Respondent No.1. He submitted that this itself indicated that prior to issuance of the said circular, there was a practice which was in vogue of Traffic Assistant signing the refund vouchers. He submitted that, therefore, no misconduct has been committed by the Respondent No.1. He submitted that so far as the allegations which were made in the charge-

sheet are concerned, it was alleged that Shri Ajay Mukherjee had prepared those vouchers and the Respondent No.1 had signed those vouchers. Nothing has been brought on record to prove the conspiracy or that there was misappropriation of any amount by the Respondent No.1. He submitted that this Court, therefore, should not interfere with the impugned order which was passed by the Tribunal while exercising its writ jurisdiction.

FINDINGS AND CONCLUSION:

8. In the present case, it is an admitted position that the Respondent No.1 had signed those two refund vouchers. The circular which was subsequently brought on record pertains to the date which is subsequent to the date of signing of the said vouchers by the Respondent No.1. This itself indicates that before the issuance of the said circular, there appears to be a practice of the Traffic Assistant signing the vouchers. It is no doubt true that the order which is passed by the Tribunal is not very happily worded. However the fact remains that from the evidence which is on record

even prima facie case, according to me, has not been made out. Apart from that, there is one other circumstance which also has to be kept in mind. The alleged incident took place sometime in 1992. More than 15 years have passed. The evidence on record does not indicate that the Respondent No.1 had misappropriated any amount. The Respondent No.1 has not been convicted by any criminal court in respect of the alleged conspiracy and/or misappropriation.

9. It is not doubt true that the Tribunal while examining the application for approval is not expected to see whether the material which is on record is sufficient for the purpose of proving the allegations against the employee and that the Tribunal has to examine whether there has been a victimization of the respondent or not and whether a prima facie case is made out. In the present case, in my view, no case has been made out by the Petitioner - Company. I do not see any reason, therefore, to interfere with the impugned order which is passed by the Tribunal while exercising the writ jurisdiction of this Court. Writ Petition is accordingly dismissed. Rule is discharged with no order as to costs.

10. At this stage, the learned counsel appearing on behalf of the Petitioner seeks stay of this Judgment for a period of four weeks. In my view, since the Tribunal had rejected the application for approval which was filed by the Petitioner - Company and against the said order the present Petition has been filed, the question of staying this judgment, in my view, does not arise. Application for stay is rejected.

(V.M. KANADE, J.)